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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION

SHAWN NORMAN RIDDLE,	)	Case No. CV 17-01950-AS
	)	
Plaintiff,	)	<b>MEMORANDUM OPINION AND</b>
	)	
v.	)	<b>ORDER OF REMAND</b>
	)	
NANCY A. BERRYHILL, Acting	)	
Commissioner of Social	)	
Security,	)	
	)	
Defendant.	)	
_____	)	

PROCEEDINGS

On March 10, 2017, Plaintiff filed a Complaint seeking review of the denial of his application for Disability Insurance Benefits. (Docket Entry No. 1). The parties have consented to proceed before the undersigned United States Magistrate Judge. (Docket Entry Nos. 9-10). On August 3, 2017, Defendant filed an Answer along with the Administrative Record ("AR"). (Docket Entry Nos. 13-14). The parties filed a Joint Submission ("Joint Stip.") on December 6, 2017, setting

1 forth their respective positions regarding Plaintiff's claim. (Docket  
2 Entry No. 17).

3  
4 The Court has taken this matter under submission without oral  
5 argument. See C.D. Cal. L.R. 7-15.  
6

7  
8 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**  
9

10 On November 15, 2013, Plaintiff, formerly employed as a service  
11 technician for an air conditioning company and a maintenance person for  
12 a carpet manufacturer (see AR 60-61, 212-14), filed an application for  
13 Disability Insurance Benefits, alleging an inability to work because of  
14 a disabling condition since February 29, 2012. (AR 173-74).  
15

16  
17 On May 12, 2015, the Administrative Law Judge ("ALJ"), Joan Ho,  
18 heard testimony from Plaintiff (who was accompanied by a non attorney  
19 representative) and vocational expert ("VE") Joseph Torres. (See AR 44-  
20 80). On July 29, 2015, the ALJ issued a decision denying Plaintiff's  
21 application. (See AR 23-36). After determining that Plaintiff had  
22 severe impairments -- "obesity; left tibia/fibular fracture, status-post  
23 open reduction internal fixation with hardware removal; history of T12  
24 compression fracture; partial thickness tear of the right rotator cuff,  
25 status-post arthroscopic repair; and, as of March 2015, status-post  
26 acute myocardial infarction with multi-vessel coronary artery disease  
27  
28

1 status post quadruple coronary artery bypass graft (AR 25-27)<sup>1</sup> -- but  
2 did not have an impairment or combination of impairments that met or  
3 medically equaled the severity of one of the listed impairments (AR 27-  
4 28), the ALJ found that Plaintiff had the the residual functional  
5 capacity ("RFC")<sup>2</sup> to perform light work<sup>3</sup> with the following limitations:  
6 can lift and carry up to 20 pounds occasionally and 10 pounds  
7 frequently; can stand and walk approximately 6 hours during an 8-hour  
8 workday; can sit for approximately 6 hours during an 8-hour workday; can  
9 occasionally climb ramps and stairs, but can never climb ladders, ropes  
10 and scaffolds; can occasionally balance, stoop, kneel, crouch and crawl;  
11 can occasionally reach with the right upper extremity, but can never  
12 reach overhead with the right upper extremity; must avoid concentrated  
13 exposure to extreme cold; and must avoid frequent running and walking on  
14 uneven terrain. (AR 28-33).  
15  
16

17  
18 Relying on the testimony of the VE, the ALJ then determined that  
19 Plaintiff was not able to perform any past relevant work (AR 33-34), but  
20 could perform jobs that existed in significant numbers in the national  
21 economy. (AR 35-36). Accordingly, the ALJ found that Plaintiff was not  
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23

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24 <sup>1</sup> The ALJ found that Plaintiff's other impairments -- pain in  
25 both knees, and adjustment disorder with mixed anxiety and depressed  
mood -- were nonsevere. (AR 25-27).

26 <sup>2</sup> A Residual Functional Capacity is what a claimant can still do  
27 despite existing exertional and nonexertional limitations. See 20  
C.F.R. § 404.1545(a)(1).

28 <sup>3</sup> "Light work involves lifting no more than 20 pounds at a time  
with frequent lifting or carrying of objects weighing up to 10 pounds."  
20 C.F.R. § 404.1567(b).

1 disabled within the meaning of the Social Security Act. (AR 34-36).

2  
3 Plaintiff requested that the Appeals Council review the ALJ's  
4 decision. (See AR 19). When the request was denied on December 9,  
5 2015, (see AR 1-5), the ALJ's decision then became the final decision of  
6 the Commissioner, allowing this Court to review the decision. See 42  
7 U.S.C. §§ 405(g), 1383(c).  
8

#### 9 10 STANDARD OF REVIEW 11

12 This Court reviews the Administration's decision to determine if  
13 it is free of legal error and supported by substantial evidence. See  
14 Brewes v. Comm'r, 682 F.3d 1157, 1161 (9th Cir. 2012). "Substantial  
15 evidence" is more than a mere scintilla, but less than a preponderance.  
16 Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir. 2014). To determine  
17 whether substantial evidence supports a finding, "a court must consider  
18 the record as a whole, weighing both evidence that supports and evidence  
19 that detracts from the [Commissioner's] conclusion." Aukland v.  
20 Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (internal quotation  
21 omitted). As a result, "[i]f the evidence can support either affirming  
22 or reversing the ALJ's conclusion, [a court] may not substitute [its]  
23 judgment for that of the ALJ." Robbins v. Soc. Sec. Admin., 466 F.3d  
24 880, 882 (9th Cir. 2006).

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1 **PLAINTIFF'S CONTENTION**

2  
3 Plaintiff alleges that the ALJ failed to properly assess  
4 Plaintiff's credibility. (See Joint Stip. at 4-13, 17).  
5

6 **DISCUSSION**

7  
8 Plaintiff asserts that the ALJ did not provide clear and convincing  
9 reasons for finding that Plaintiff's testimony about his symptoms was  
10 not credible. (See Joint Stip. at 4-13, 17). Defendant asserts that  
11 the ALJ provided good reasons for finding Plaintiff not fully credible.  
12 (See Joint Stip. at 13-16). After consideration of the record as a  
13 whole, the Court finds that Plaintiff's claim of error warrants a remand  
14 for further consideration.  
15

16 1. Legal Standard

17  
18 Where, as here, the ALJ finds that a claimant suffers from a  
19 medically determinable impairment that could reasonably be expected to  
20 produce his alleged symptoms, the ALJ must evaluate "the intensity,  
21 persistence, and functionally limiting effects of the individual's  
22 symptoms . . . to determine the extent to which the symptoms affect the  
23 individual's ability to do basic work activities. This requires the  
24 [ALJ] to make a finding about the credibility of the individual's  
25 statements about the symptom(s) and its functional effect." Soc. Sec.  
26 Ruling 96-7p.  
27

28 A claimant initially must produce objective medical evidence  
establishing a medical impairment reasonably likely to be the cause of

1 the subjective symptoms. Smolen v. Chater, 80 F.3d 1273, 1281 (9th Cir.  
2 1996); Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir. 1991). Once a  
3 claimant produces objective medical evidence of an underlying impairment  
4 that could reasonably be expected to produce the pain or other symptoms  
5 alleged, and there is no evidence of malingering, the ALJ may reject the  
6 claimant's testimony regarding the severity of his or her pain and  
7 symptoms only by articulating specific, clear and convincing reasons for  
8 doing so. Brown-Hunter v. Colvin, 798 F.3d 749, 755 (9th Cir.  
9 2015)(citing Lingenfelter v. Astrue, 504 F.3d 1028, 1036 (9th Cir.  
10 2007)); see also Smolen, supra; Reddick v. Chater, 157 F.3d 715, 722  
11 (9th Cir. 1998); Light v. Social Sec. Admin., 119 F.3d 789, 792 (9th  
12 Cir. 1997). Because the ALJ does not cite to any evidence in the record  
13 of malingering, the "clear and convincing" standard stated above  
14 applies.

15  
16 Generalized, conclusory findings do not suffice. See Moisa v.  
17 Barnhart, 367 F.3d 882, 885 (9th Cir. 2004) (the ALJ's credibility  
18 findings "must be sufficiently specific to allow a reviewing court to  
19 conclude the [ALJ] rejected [the] claimant's testimony on permissible  
20 grounds and did not arbitrarily discredit the claimant's testimony")  
21 (citation and internal quotation marks omitted); Holohan, 246 F.3d at  
22 1208 (the ALJ must "specifically identify the testimony [the ALJ] finds  
23 not to be credible and must explain what evidence undermines the  
24 testimony"); Smolen, 80 F.3d at 1284 ("The ALJ must state specifically  
25 which symptom testimony is not credible and what facts in the record  
26 lead to that conclusion."); see also SSR 96-7p.

27 2. The ALJ's Credibility Finding  
28

1 Plaintiff made the following statements in a "Function Report -  
2 Adult" dated December 15, 2013 (see AR 228-36):

3  
4 He lives with family in a prefabricated place. He  
5 provides financial support for his family. He takes care  
6 of pets by loving them (his wife feeds the pets). With  
7 respect to his daily activities, he does physical therapy and  
stretching, uses a H-wave machine, visits doctors, and takes  
medications. (See AR 228-29, 235).

8 For his impairments he takes Hydrocod/Norco (which  
9 causes him to be tired and angry), Ambien (which causes him  
10 to be tired and to have memory loss), Ativan (which causes  
11 him to be tired and to have memory loss), and Ibuprofen  
(which causes him to have an upset stomach and constipation).  
(See AR 235).

12 His impairments affect his walking, standing, bending  
13 over, lifting, climbing, stair climbing, squatting and  
14 carrying step ladders, and therefore limit his ability to  
work. His impairments affect his sleep (his pain keeps him  
15 awake). His impairments affect his abilities to dress (he  
has pain), bathe (he has pain), use the toilet (he has pain  
16 and cannot twist), and have sex. He does not need special  
reminders to take care of personal needs and grooming, and he  
17 does not need reminders to take medicine. (See AR 228-30,  
18 235).

19 He prepares his own meals (once or twice a week), but  
his wife does most of the cooking. His impairments have not  
20 changed his cooking habits. His household chores are  
household repairs. He needs his son to help him with lifting  
21 and doing physically demanding chores. He cannot do  
housework or yardwork because he cannot lift or push or pull  
22 heavy items. His wife feeds their son, does the laundry, and  
cleans the house. He goes outside alone, driving the car,  
23 daily. He shops in stores for food and personal hygiene  
items, two times a month (1 hour or more). He is able to pay  
24 bills, count change, handle a savings account, and use a  
checkbook/money orders. His impairments have not changed his  
25 ability to handle money. (See AR 229-32).

26 His hobbies and interests are exercising, hiking, riding  
27 quads, taking long walks, and holding and playing with his  
grandson. He does limited exercise and cannot do these  
28 activities because of pain in his back, leg, arm and knee.

1 He socializes with others as often as he can. He regularly  
2 goes to doctors' appointments and physical therapy, but he  
3 needs to be reminded to go places. He sometimes needs  
4 someone to accompany him out, depending on the activity  
5 (i.e., loading of heavy items). He has problems getting  
6 along with others because his medication and pain make him  
7 irritable. Since his accident he no longer goes camping or  
8 rides ATVs. (See AR 232-33).

9 His impairments affect his lifting, squatting, bending,  
10 standing, reaching, walking, sitting, kneeling, stair-  
11 climbing, memory (the medication), concentration, and  
12 getting along with others. He does not know how far he can  
13 walk before needing to rest; he uses a cane if he needs to  
14 walk far. He does not know for how long he can pay attention  
15 (he is always in pain). He finishes what he starts and can  
16 follow written and spoken instructions pretty well. He does  
17 not know how well he gets along with authority figures. He  
18 has never been fired or laid off from a job because of  
19 problems getting along with other people. With respect to  
20 handling stress, he takes anti-anxiety medication since the  
21 accident (he does not have work, his family does not have  
22 medical insurance, and he has limited funds). He has fears  
23 of not working and of being poor. In March 2012, he was  
24 prescribed a wheelchair, walker, crutches, back brace, and a  
25 cane, and he uses a cane for long walks. (See AR 233-35).

26 Plaintiff gave the following testimony at the May 12, 2015  
27 administrative hearing (see AR 47-66):

28 He is married, and lives with his wife in a mobile home.  
He is 44 years old, 5'9" tall, and weighs 180 pounds. He is  
right-handed. He has a driver's license. Prior to March 8,  
2015 (when he had a heart attack), he drove on a limited  
basis, to doctors' appointments and for prescriptions. His  
back hurt when he drove long distances (for about 30  
minutes). He has not driven since his heart attack -- the  
doctors retracted his driving after his surgery, the  
medication makes him dizzy, and he is concerned about injury  
if an air bag deploys. He was no longer able to work as of  
February 29, 2012 (when he had a work accident, falling from  
the roof 15 feet, and sustaining numerous injuries -- a left  
ankle open tibia fracture, three compression fractures in the  
back, three bulging discs, a right rotator cuff tear, both  
knees [the right knee gives out when he bends down, a MRI



1 shows a baker's cyst behind his right kneecap]), and he has  
2 not worked since then. He had shoulder surgery (torn  
3 rotator) in April 2014. He walked into the hearing using a  
4 cane, and he has used a cane mostly outside the house every  
5 day since February 29, 2012. As a result of the accident, he  
6 suffers from depression and anxiety, which causes him to have  
7 daily panic attacks that would present a problem for him  
8 returning to the work setting. (See AR 45, 48-51, 53, 55,  
9 57-59, 61-62).

10 He has limitations in sitting, standing, walking and  
11 lifting because of his back and his knees and ankle. (He did  
12 not know if Dr. Allison, the doctor who had reconstructed his  
13 ankle, had put any physical restrictions on him. His ankle  
14 has lost range of motion in his ankle.) He has limitations  
15 in reaching because of his back, left arm, and left shoulder.  
16 He can sit for 30 minutes before feeling discomfort. After  
17 sitting for 30 minutes, he has to get up (it takes about 15  
18 minutes to relieve the back pain). He can stand in one spot  
19 for about 15 to 20 minutes before feeling discomfort.  
20 Although he is not supposed to lift any weight, he estimates  
21 he is able to lift 10 pounds. (See AR 51-53, 55-56, 62).

22 He is not able to do daily chores (cooking, cleaning)  
23 because of his impairments. On a typical day, he wakes up,  
24 takes a pain pill, eats breakfast, mostly stays at home until  
25 he takes a walk around the neighborhood for about 20 minutes  
26 (which causes pain in his left ankle, back and shoulder, but  
27 he does it based on the doctor's instruction that it is good  
28 for his heart). (See AR 59-60).

Most of the day, when he is not walking, he sits on the  
couch and puts his legs up to relieve the pain. Pain  
medications are helpful, but there are side effects, such as  
memory loss, tiredness, and dizziness. To counter the side  
effects he usually takes one nap a day for about an hour and  
a half. (See AR 53-55).

He tries to avoid his panic attacks. He has seen a  
psychiatrist (Dr. Guntupalli) for his depression and anxiety  
every 90 days. Since 2012 he saw a therapist (Mike O'Cleary)  
for his depression and anxiety once a week for a year, but  
his insurance changed. The therapy and medications helped  
him cope with the symptoms. Although his ankle and back have  
healed, he is still having problems with them. He recently  
received an injection for his ankle. (Dr. Allison has not

1 recommended an ankle replacement). For his back, a nerve  
2 block in May has been scheduled, and acupuncture has been  
3 recommended. He is not getting any treatment for his right  
knee. (See AR 57-58, 62-65).

4 He is not able to work in a desk job or a bench job,  
5 with no real skills required, because he cannot sit for  
6 longer than 20 to 30 minutes, he has a bad memory, he has  
7 trouble concentrating, he has restrictions on lifting,  
reaching, sitting and concentrating, and his medication makes  
him tired.  
8 (See AR 61).

9 After summarizing Plaintiff's testimony (see AR 29), the ALJ  
10 determined that Plaintiff's "medically determinable impairments could  
11 reasonably be expected to cause the alleged symptoms; however, the  
12 [plaintiff's] statements concerning the intensity, persistence and  
13 limiting effects of these symptoms are not entirely credible for the  
14 reasons explained in this decision." Id.

15  
16 The ALJ found that Plaintiff's functional limitations were  
17 sufficiently accommodated by the RFC determination. (AR 29-30). In  
18 making this finding, the ALJ considered the opinions provided by two  
19 state agency medical consultants, a consultative medical examiner,  
20 Plaintiff's treatment physician, two state agency psychological  
21 consultants, a consultative psychiatric examiner, and workers'  
22 compensation doctors. See AR 30-32. The ALJ also based this finding  
23 on his assessment of Plaintiff's credibility, stating, "[i]n making this  
24 finding [about Plaintiff's RFC], the undersigned must also address the  
25 credibility of the claimant as it relates to statements made regarding  
26 the extent and severity of the claimant's impairments and the  
27 limitations they cause." AR 32.

1 After reviewing Plaintiff's treatment history, work history and  
2 activities of daily living, and considering the statements in the third  
3 party function report prepared by Plaintiff's wife, the ALJ concluded  
4 that plaintiff's "statements about the severity and limiting effects of  
5 his impairments cannot be given full weight as the factors that affect  
6 his credibility outweigh the factors that bolster his credibility." AR  
7 33.

8 a. Treatment History  
9

10 The ALJ discounted Plaintiff's credibility based on Plaintiff's  
11 treatment history, finding that Plaintiff's ankle surgery was successful  
12 and that even after a second surgery to remove the hardware, the ankle  
13 was reported to be stable, there was "no evidence joint degeneration in  
14 spite of the greater likelihood of degeneration following this type of  
15 injury," (AR 32), and that Plaintiff's limited range of motion in his  
16 ankle was taken into account by the RFC limitations. Id.

17  
18 With respect to Plaintiff's injury to his thoracolumbar spine, the  
19 ALJ noted that the spine was "structurally stable and as such, the  
20 objective medical evidence of record does not support [Plaintiff's]  
21 allegations of debilitating pain symptoms from his low back." (AR 32).  
22

23 The ALJ noted that Plaintiff's complaints of shoulder pain predated  
24 his fall in February 2012, Plaintiff had received conservative treatment  
25 for the partial tear of the rotator cuff prior to having arthroscopic  
26 surgery to repair the tear in 2014, and that Plaintiff's continued  
27 symptoms of pain and loss of range of motion were taken into account in  
28 the RFC limitations.

1 The ALJ found that the records of treatment for Plaintiff's other  
2 impairments and his recent heart attack did not affect his ability to  
3 work within the RFC limitations and discounted Plaintiff's allegations  
4 regarding the functional limitations imposed by his depression and knee  
5 impairments. (AR 32).

6  
7 b. Work History  
8

9 The ALJ found that Plaintiff's credibility was bolstered by his  
10 work history, noting that Plaintiff's long and continuous history of  
11 work at substantial gainful activity levels going back more than fifteen  
12 years, his lack of earnings since the alleged onset date, "generally  
13 supports his allegations that he is not able to work following his  
14 traumatic fall on February 29, 2012." (AR 33).

15  
16 c. Activities of Daily Living  
17

18 The ALJ found that Plaintiff's ability to drive and go out alone  
19 and continue to socialize was inconsistent with the statement made in  
20 his function report, that he has difficulty walking, standing, bending  
21 over, lifting, climbing stairs, squatting, and carrying object and was  
22 therefore not able to perform most household chores. (AR 33). The ALJ  
23 also discounted Plaintiff's allegations of problems with concentration  
24 and attention, noting that Plaintiff admitted that he was able to finish  
25 activities without difficulty, follow both written and spoken  
26 instructions well, handle his family's finances, and drive, "which are  
27 all activities that require good attention and concentration." Id. The  
28 ALJ also found that Plaintiff's testimony about limited activities was

1 contrary to the statements in his function report and the medical  
2 records which note stability and minimal worsening of Plaintiff's  
3 impairments. Id.

4  
5 3. The ALJ Did Not Properly Assess Plaintiff's Credibility

6  
7 As set forth below, the ALJ failed to provide clear and convincing  
8 reasons for finding that Plaintiff's testimony about the intensity,  
9 persistence and limiting effects of his pain and symptoms was not  
10 entirely credible.<sup>4</sup>

11  
12 First, the ALJ failed to "specifically identify 'what testimony is  
13 not credible and what evidence undermines [Plaintiff's] complaints.'" Parra v. Astrue, 481 F.3d 742, 750 (9th Cir. 2007) (quoting Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1995)); see also Smolen, 80 F.3d at  
15 1284 ("The ALJ must state specifically what symptom testimony is not  
16 credible and what facts in the record lead to that conclusion").

17  
18  
19 Second, the ALJ's partial discrediting of Plaintiff's testimony  
20 about his symptoms and functional limitations based on his ability to  
21 perform certain daily activities, such as driving, going out alone, and  
22 socializing, was not a clear and convincing reason. See Vertigan v. Halter, 260 F.3d 1044, 1050 (9th Cir. 2001) ("[T]he mere fact that a

23  
24  
25 <sup>4</sup> The Court will not consider reasons for finding Plaintiff not  
26 entirely credible (see Joint Stip. at 15-16) that were not given by the  
27 ALJ in the decision. See Connett v. Barnhart, 340 F.3d 871, 874 (9th  
28 Cir. 2003) ("We are constrained to review the reasons the ALJ asserts."; citing SEC v. Chenery Corp., 332 U.S. 194, 196 (1947), Pinto v. Massanari, 249 F.3d 840, 847-48 (9th Cir. 2001)); and Garrison v. Colvin, 759 F.3d 995, 1010 (9th Cir. 2014) ("We review only the reasons provided by the ALJ in the disability determination and may not affirm the ALJ on a ground upon which he did not rely.").

1 plaintiff has carried on certain daily activities . . . does not in any  
2 way detract from her credibility as to her overall disability. One does  
3 not need to be 'utterly incapacitated' in order to be disabled.");  
4 Reddick, supra ("Only if the level of activity were inconsistent with  
5 the Claimant's claimed limitations would these activities have any  
6 bearing on Claimant's credibility."). While a plaintiff's ability to  
7 spend a "*substantial part*" of his day engaged in pursuits involving the  
8 performance of physical functions that are transferable to a work  
9 setting may be sufficient to discredit him, here, there is no evidence  
10 that Plaintiff was spending a substantial part of his day engaged in  
11 these activities or that the physical demands of such tasks as driving,  
12 going out alone and socializing when able to do so, were transferable  
13 to a work setting. See Morgan v. Comm'r of Soc. Sec. Admin., 169 F.3d  
14 595, 600 (9th Cir. 1999). Indeed, at the time of the hearing, Plaintiff  
15 testified he was not able to do daily chores (cooking, cleaning) because  
16 of his impairments and mostly stays at home and puts his legs up to  
17 relieve the pain. (AR 59-60). Thus, Plaintiff's admitted daily activity  
18 does not constitute a legally sufficient reason to reject Plaintiff's  
19 credibility.

20  
21 It is not clear whether the ALJ considered Plaintiff's testimony  
22 about his limited abilities to perform such daily activities (see AR 45,  
23 48-49 [Plaintiff testified that before his heart attack on March 8, 2015  
24 he drove on a limited basis to doctors' appointments and to obtain  
25 prescriptions], 51 [Plaintiff testified that his back would hurt if he  
26 drove long distances, which was for about 30 minutes], 231 [Plaintiff  
27 testified that he shopped in stores for food and personal hygiene items  
28 on a biweekly basis for only an "hour or more"], 232 [Plaintiff

1 testified that he sometimes needed someone to accompany him when he went  
2 out, particularly if it required the loading of items], and 232  
3 [Plaintiff testified that he socializes with others "[a]s often as [he]  
4 can"]. Therefore, the degree to which Plaintiff could perform such  
5 daily activities may not have been inconsistent with his testimony  
6 regarding his symptoms and limitations. See Reddick, supra; see also  
7 Morgan v. Commissioner of Social Sec. Admin., 169 F.3d 595, 600 (9th  
8 Cir. 1999)("If a claimant is able to spend a substantial part of his day  
9 engaged in pursuits involving the performance of physical functions that  
10 are transferable to a work setting, a specific finding as to this fact  
11 may be sufficient to discredit a claimant's allegations.").

12  
13 Third, to the extent that the ALJ partially discredited Plaintiff's  
14 testimony based on inconsistencies in Plaintiff's testimony and on  
15 inconsistencies between Plaintiff's testimony and notations in the  
16 medical record, see Burch v. Barnhart, 400 F.3d 676, 680 (9th Cir. 2005)  
17 ("In determining credibility, an ALJ may engage in ordinary techniques  
18 of credibility evaluation, such as considering claimant's reputation for  
19 truthfulness and inconsistencies in claimant's testimony."); Light v.  
20 Social Security Admin., supra ("In weighing a claimant's credibility,  
21 the ALJ may consider his reputation for truthfulness, inconsistencies  
22 either in his testimony or between his testimony and his conduct, his  
23 daily activities, his work history, and testimony from physicians and  
24 third parties concerning the nature, severity, and effect on the  
25 symptoms of which he complains."), such reason was not clear and  
26 convincing. For example, the ALJ failed to state how Plaintiff's  
27 testimony about his difficulties with concentration and attention --  
28 (see AR 233 [in the Function Report, Plaintiff testified that his

1 impairments affected his ability to concentrate and that he did not know  
2 for how he could pay attention because he was always in pain], AR 61 [at  
3 the hearing, Plaintiff testified he is unable to do basic work full-time  
4 because of trouble concentrating]) -- was inconsistent with Plaintiff's  
5 testimony about his abilities to finish activities without difficulty,  
6 follow written and spoken instructions well, handle his family's  
7 activities, and drive (see AR 231, 233 [in the Function Report,  
8 Plaintiff testified that he drove a car, that he was able to pay bills,  
9 count change, handle a savings account, and use a checkbook/money  
10 orders, and that he finished what he started (using a conversation,  
11 chores, reading, and watching a movie as examples), AR 48-49, 51 [at the  
12 hearing, Plaintiff testified that he does limited driving, and that his  
13 back begins to hurt after about 30 minutes of driving])). Moreover, the  
14 ALJ failed to specify how Plaintiff's testimony "about limited  
15 activities" contradicted Plaintiff's testimony in the Function Report  
16 and "the notations in the file of stability and minimal worsening of his  
17 impairments following the various surgical interventions."

18  
19 Fourth, the ALJ's determination that Plaintiff's credibility was  
20 diminished because of his treatment history was essentially a finding  
21 that Plaintiff's testimony about symptoms and functional limitations  
22 were not supported by the objective medical evidence of record.  
23 However, once a claimant demonstrates medical evidence of an underlying  
24 impairment, "an ALJ 'may not disregard [a claimant's testimony] solely  
25 because it is not substantiated affirmatively by objective medical  
26 evidence.'" Trevizo v. Berryhill, 862 F.3d 987, 1001 (9th Cir.  
27 2017)(quoting Robbins v. Soc. Sec. Admin., 466 F.3d 880, 883 (9th Cir.  
28 2006)).



1  
2 The Court finds that the ALJ's stated reasons for discounting  
3 Plaintiff's credibility were not sufficiently specific, or clear and  
4 convincing to allow the Court to conclude that the ALJ discounted  
5 Plaintiff's credibility on legally permissible grounds, and therefore,  
6 the Court is therefore unable to defer to the ALJ's credibility  
7 determination. Cf. Flaten v. Sec'y of Health & Human Servs., 44 F.3d  
8 1453, 1464 (court will defer to the ALJ's credibility determinations  
9 when they are appropriately supported in the record by specific findings  
10 justifying that decision) (citations omitted).

11  
12 4. Remand Is Warranted

13  
14 The decision whether to remand for further proceedings or order an  
15 immediate award of benefits is within the district court's discretion.  
16 Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000). Where no  
17 useful purpose would be served by further administrative proceedings,  
18 or where the record has been fully developed, it is appropriate to  
19 exercise this discretion to direct an immediate award of benefits. Id.  
20 at 1179 ("[T]he decision of whether to remand for further proceedings  
21 turns upon the likely utility of such proceedings."). However, where,  
22 as here, the circumstances of the case suggest that further  
23 administrative review could remedy the Commissioner's errors, remand is  
24 appropriate. McLeod v. Astrue, 640 F.3d 881, 888 (9th Cir. 2011);  
25 Harman v. Apfel, supra, 211 F.3d at 1179-81.

26  
27 Since the ALJ failed to properly assess Plaintiff's credibility,  
28 remand is appropriate. Because outstanding issues must be resolved

1 before a determination of disability can be made, and "when the record  
2 as a whole creates serious doubt as to whether the [Plaintiff] is, in  
3 fact, disabled within the meaning of the Social Security Act," further  
4 administrative proceedings would serve a useful purpose and remedy  
5 defects. Burrell v. Colvin, 775 F.3d 1133, 1141 (9th Cir.  
6 2014)(citations omitted).

7  
8 **ORDER**  
9

10 For the foregoing reasons, the decision of the Commissioner is  
11 reversed, and the matter is remanded for further proceedings pursuant  
12 to Sentence 4 of 42 U.S.C. § 405(g).  
13

14 LET JUDGMENT BE ENTERED ACCORDINGLY.  
15

16 DATED: January 5, 2018  
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18

19 /s/  
ALKA SAGAR  
20 UNITED STATES MAGISTRATE JUDGE  
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